

April 4, 2004

AGAR ADVISORY

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT
AGAR ADVISORY NO. 64

Notices of Terrorism Insurance Coverage

INTRODUCTION: This Agriculture Acquisition Regulation (AGAR) Advisory has been prepared to provide guidance on terrorism insurance coverage offered as a rider or an attachment to a performance or payment bond.

SUMMARY: The Terrorism Risk Insurance Act of 2002, (TRIA), (Public Law 107-297) establishes a temporary Federal program to address market disruptions and ensure the continued availability of property and casualty insurance for terrorism risks. Policy riders offering terrorism insurance coverage are now often provided with a performance bond. Generally, the coverage is not necessary and may be declined.

SPECIFIC ISSUES:

The Terrorism Insurance Program established by TRIA provides a temporary system of shared public and private compensation for insured losses resulting from acts of terrorism. An “act of terrorism” must be expressly identified as such by the Secretaries of Treasury and State along with the U.S. Attorney General.

Under this program, which terminates on December 31, 2005, insurers offering property and casualty insurance are required to make available insurance coverage for losses due to terrorism. This insurance coverage must not materially differ from the terms, amounts, and other coverage limitations applicable to losses from events other than terrorism.

Insurers offering property and casualty insurance are required to make “clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program.” The Federal share of the loss can be as high as 90 percent of an amount in excess of the individual insurer’s deductible amount. The Federal share is funded from appropriations to the Department of Treasury and from premiums remitted to the Treasury.

The insurance offered should, in most cases, be declined.

Construction contract bonds: Should an act of terrorism occur, a contractor’s right to proceed with the work might be terminated for default but the contractor would not be liable for excess costs due to “acts of God or of the public enemy.” Any excess costs

would accrue to the contracting activity rather than either to the performance bond surety or against amounts retained to guarantee performance. The terrorism insurance coverage would not be invoked.

Other than construction contract bonds: Under Federal Acquisition Regulation 28.103, performance and payment bonds may be required for contracts other than construction contracts in excess of the simplified acquisition threshold “when necessary to protect the Government’s interest.” In these events, the contracting officer, with the assistance of fiscal officials and General Counsel, must consider the nature of the interest to be protected and determine the necessity for terrorism insurance coverage.

QUESTIONS:

If you have questions about this advisory, please contact J. R. Holcombe Jr. by telephone at (202) 720-8484, by fax at (202) 720-8972, or by email to Richard.Holcombe@USDA.gov.

This advisory is available at <http://www.usda.gov/procurement/policy/advisories.html>.

EXPIRATION DATE: December 31, 2005.

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